

**THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA
AND
THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI**

FAMILY COURT APPEAL NO.53 OF 2022

JUDGMENT:-

1. Heard Sri Mahadev, learned counsel who argued on behalf of Sri A.Naveen Kumar, learned counsel on record for the petitioner as well as Sri M.Damodar Reddy, learned counsel on record for the respondent.

2. This Family Court Appeal is directed against the order that is rendered by the Family Court, Mahabubnagar in G.W.O.P.No.38 of 2019, dated 07.04.2022.

3. Upon hearing the learned counsel appearing for the contesting parties and upon perusing the material available on record, the following facts, which are undisputed, could be perceived.

(i) The appellant herein filed a petition under Section 25 of The Guardians and Wards Act for grant of custody of his son.

(ii) On 17.03.2020, the appellant, through his counsel, filed a memo seeking the Court to dismiss the petition filed by him as not pressed.

(iii) *The Court, acting on the memo filed, dismissed the petition i.e. G.W.O.P.No.38 of 2019. However, taking into consideration the welfare of the child, visitation rights were granted to him by directing the respondent to produce the child before the Mediation Centre, Mahabubnagar, on every second Saturday at 11.00 AM and to allow him to visit his son till 5.00PM.*

4. Making his submission, learned counsel for the appellant states before this Court that the father of the appellant, who is aged about 78 years, i.e. the grandfather of the child in question, is bed ridden and he intends to have the company of his grand son during Sankranthi vacation and thus, necessary orders may be passed for the grandfather of the child to exercise such a right of having the presence of his grandson during this period.

5. Vehemently opposing the relief sought for, the learned counsel for the respondent states that when the appellant, who moved an application for custody of the child, not pressed the said application, he has no right to present the present appeal and equally, the grandfather i.e. the father of the appellant cannot ask for custody of the child through the present appeal.

6. The Family Courts Act has got overriding effect over other Acts. Section 19 of the Family Courts Act which deals with the appeals, clearly lays down that no Appeal shall be preferred against an order passed with the consent of the parties.

7. In the case on hand, by the contents of the impugned order and through the submission of the learned counsels appearing for respective parties, it is clear that the appellant herein, who moved an application for custody of the child in question, filed memo not pressing the said petition and therefore, G.W.O.P.No.38 of 2019 was dismissed as not pressed. Though specific visitation rights were not sought for in OP, it is borne on record that the appellant, during the pendency of the OP, moved an application vide I.A.No.271 of 2020 seeking for granting of visitation rights. The Court accordingly granted visitation rights. The order to that extent and the findings regarding grant of visitation rights is not agitated by either parties and the present appeal is also not directed against grant of such visitation rights. In case there is necessity on part of grandfather of the child i.e. the father of the appellant herein to have the custody of the child or for grant of visitation rights, it is incumbent on part of the said person to move an appropriate application before the appropriate forum. This Court, while dealing with the appeal,

does not hold any right to extend its wings and grant such other reliefs which are not the subject matter of the OP in question. That apart, we do not find any need of interference in the well reasoned order that is rendered by the Family Court, Mahabubnagar. Therefore, we are of the considered view that the present appeal lacks merits.

8. Resultantly, the Appeal is dismissed.
9. Miscellaneous petitions, if any pending, shall stand closed.

Dr. JUSTICE CHILLAKUR SUMALATHA

JUSTICE M.G.PRIYADARSINI

Dt.11.01.2023
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